IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2170 OF 2003
IN
SUIT NO.2237 OF 2003

Navinchandra S. Shetty
& Anr. ..Plaintiffs.

Vs.

Jaiwantabai S. Ambhore
& Ors. ..Defendants.

And

Parivartan Co-op. Bank Ltd. ..Respondents.

Mr.Deepak Merchant i/b.M/s.Vinod Mistry & Co. for the Plaintiffs.

Mr.S.B.Prabhavalkar for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 1ST DECEMBER, 2005

P.C. :

This Notice of Motion has been taken out for a decree on admission. The Plaintiff's case is that a sum of Rs.8,00,000/- stood to the credit of his capital account in the Defendants firm. The further case of the Plaintiffs is that this amount was transferred as a security deposit in Hotel Sailesh Sudarshan Bar and Restaurant by a conducting agreement dated 17.4.2002. The premises have admittedly not been made available for one reason or the other to the Plaintiffs.

2. Thus, the Plaintiff's case is that he is either entitled to the sum of Rs.8,00,000/- by virtue of the conducting agreement not having been implemented or by virtue of the same being due to him as per his capital account in the partnership firm. The conducting agreement has been disputed. There is no question therefore of granting a decree on admission in respect thereof.

3. The Plaintiff's case is that the partnership agreement is not in subsistence because it was in fact agreed not to go ahead with the same and was given a go by. The Defendant's case is however that the partnership agreement is in subsistence. If the Defendants establish this case, the Plaintiffs would be entitled to the credit of the said sum in their capital account on a final disposal of the case. In either case, there would be no question of a decree on admission however strong the Plaintiff's case may be at the prima-facie stage.

4. In the circumstances, the Notice of Motion is dismissed.

5. It is agreed between the parties that they

alongwith their representatives/handwriting experts/Advocates shall be entitled to take inspection of the original alleged conducting agreement, presently deposited before the Metropolitan Magistrate’s Court.